

statements made by representatives of the City during the bargaining process. The City filed its answer on January 30, 1995 after which the case was heard by the PELRB on February 28, 1995.

FINDINGS OF FACT

1. The City of Keene is a "public employer" with the meaning of RSA 273-A:1 X.
2. The State Employees' Association of New Hampshire, S.E.I.U. Local 1984, is the certified bargaining agent for both the Police Patrolmen's and the Police Supervisors' bargaining units in the City of Keene.
3. The City and the Union were parties to collective bargaining agreements (CBA's) for both bargaining units for the period July 1, 1991 to June 30, 1993. On or about June 25, 1993 the Union advised the City that it sought to open negotiations for successor CBA's.
4. On February 23, 1993 the parties met and adopted ground rules for their negotiations. From that date until the filing of this complaint the parties have met on numerous occasions to negotiate, including a fact finding on October 19, 1993 and three mediations on August 13, 1993, March 21, 1994 and November 7, 1994, respectively. They have yet to settle on a successor CBA; negotiations are on-going, as per Decision Nos. 95-05 and 95-20.
5. On or about Tuesday, October 25, 1994, Assistant City Manager Lawrence Shaffer, in his role as the City's chief negotiator for fire department negotiations, was discussing the status of those negotiations with counsel for the firefighters' union. During the course of that telephone conversation, Shaffer said words to the effect that the first group, police or fire, to come to settlement on a successor CBA would be more likely than the other to achieve retroactivity because the "ratifying body [City Council] is more likely to accept retroactivity sooner rather than later." The two fire department bargaining units have since reached settlement with the City and signed contracts representing that agreement. A City counter-proposal to

the police bargaining units contained elements of retroactivity since February 25, 1995. That proposal has not been withdrawn by the City after the fire department bargaining units reached settlement. Likewise, the City has not proposed, formally or informally, that only the first of the two departments, police or fire, to settle would receive retroactivity while the other would not.

6. During a caucus of members of the management negotiating team on November 7, 1994, City Councilor Georgina, responding to an internal discussion about a certain bargaining strategy, said words to the effect, "They're not going to accept it; we might as well offer them all \$3,000 to drop out of the union." Neither the mediator nor any members of the union negotiating team was present when this comment was made. It never became a position or offer by the City, formally or informally, during the course of bargaining.
7. By its complaint of January 3, 1995, the Union has alleged that the actions described in paragraphs 5 and 6, above, are violative of RSA 273-A:5 I (e).

DECISION AND ORDER

While the nature of the charges asserted by the union are serious and could be very detrimental to a collective bargaining relationship, we must examine the complained of activities in the context in which they occurred. When we do this, we find that both the telephone conversation and the city councilor's utterance were private events, either in the course of a two-person, non-public telephone conversation with individuals who were not principals in the police negotiations or in the course of a management caucus. In each instance, both utterances attributed to representatives of management were not made across the bargaining table and never became either offers or positions of the City.

Based on the evidence and testimony presented to this board, the Union did not establish any nexus between the complained of conduct and the parties' statutory obligation to bargain. To the contrary, and consistent with our Decision Nos. 95-05 and 95-20, the record establishes that the parties have continued to bargain. Likewise, there is no showing that the complained of private

utterances had any adverse impact on the Union's organizational integrity or ability to negotiate.

For the foregoing reasons, the foregoing ULP is DISMISSED.

So ordered.

Signed this 9th day of March, 1995.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding.
Members Richard Roulx and E. Vincent present and voting.